



CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Monday, the 19th November, 1951

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF PAKISTAN

Monday, the 19th November, 1951

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at Three of the Clock, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

THE CONSTITUTION (SECOND AMENDMENT) BILL

Mr. President : Now we take up the consideration of the Bill further to amend the Government of India Act, 1935, and the Indian Independence Act, 1947, clause by clause.

Now clause 2.

The Honourable Pirzada Abdus Sattar Abdur Rahman (Sind : Muslim) : Sir, with regard to clause 2 I have got a submission to make that this clause may not be put to vote because this may be voted against because there are certain things to be examined before this amendment is embodied in the constitution and I would like to bring this measure at a subsequent date. Therefore this clause may not be voted upon. There is an amendment by Dr. Ishtiaq Husain Qureshi but I think it will have to be voted down and his amendment will not be moved.

The Honourable Dr. Ishtiaq Husain Qureshi (East Bengal : Muslim) : My amendment is purely of a negative character and perhaps it is not in order.

Shri Dhirendra Nath Dutta (East Bengal : General) : Mr. President, I should be very glad to know why this clause is going to be omitted.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, this clause lays down certain disqualifications on persons from becoming a member of the Provincial Legislatures. Sir, no doubt the Nationality Act has been passed but the rules under it are not yet issued and we have got certain refugee members of the Provincial Legislatures and under the rules some formalities have got to be performed before the nationality could be determined finally. Now as soon as this Act is passed and if this disqualification is there and the nationality of those members is not finally decided, anybody might raise an objection and there might be difficulties and therefore I want all those formalities to be complied with and the details about Nationality Law settled and then I would like to bring this measure in a separate Bill and that is why I have omitted this clause for the time being but it will be brought up subsequently. It is very necessary and the measure will be there in the constitution but at a later date.

Mr. President : The question is :

“That clause 2 stand part of the Bill.”

The motion was negatived.

Clause 2 was deleted from the Bill.

Mr. President : The question is :

“That clause 3 stand part of the Bill.”

Shri Kamini Kumar Dutta (East Bengal : General) : Sir, I propose the following amendment :

“That in Clause 3 of the Bill, in Clause (b) of the proposed sub-section (2), after the words ‘partially excluded area’, the following be inserted :—

‘without including any new area not appertaining to excluded area in it’.”

[Shri Kamini Kumar Dutta.]

Sir, clause (b) as at present worded provides that the Governor-General may at any time by an order alter but only by way of rectification of boundaries, any excluded or partially excluded area. This power has been given to the Governor-General. The object of my amendment is this that in making this rectification of boundaries, no power is given to the Governor-General to include any new area in the excluded areas or partially excluded areas. I want to remove all doubts about it. Otherwise as the phraseology of this sub-clause (b) is at present it might be thought that in altering the boundaries of the existing excluded areas, it may be altered in a manner so as to include some other area which was not already excluded area. The whole object of my amendment is only to make it quite clear and not to leave any room for any sort of doubt.

Mr. President : Motion moved :

"That in Clause 3 of the Bill, in Clause (b) of the proposed sub-section (2), after the words 'partially excluded area', the following be inserted :—

'without including any new area not appertaining to excluded area in it'."

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, I am afraid the apprehensions of my honourable friend are absolutely unfounded, because as he would see this clause of the Bill refers to areas which are excluded areas. There is no question of declaring further areas excluded which would be a retrograde step. I do not know how it has occurred to my honourable friend and it is with the intention of doing away with the excluded areas that power is given. This amendment would therefore be redundant and unnecessary.

Mr. President : The question is :

"That in Clause 3 of the Bill, in Clause (b) of the proposed sub-section (2), after the words 'partially excluded area', the following be inserted :—

'without including any new area not appertaining to excluded area in it'."

The motion was negatived.

Mr. President : The question is :

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

Shri Kamini Kumar Dutta (East Bengal : General) : Sir, I move the following amendment :

"That in Clause 5 of the Bill, after the words 'by order' occurring in the 3rd line, the words 'made under section 229 of this Act' be inserted."

In Section 219 of the Government of India Act, the expression "High Court" has been defined. There, of course, the power is vested in His Majesty under the Letters Patent to raise the status of a reconstituted or newly constituted Court to that of a High Court. That is how it stands in the present Act and that is intended to be replaced by this alteration. It is perfectly right that there is a power which was in His Majesty by Letters Patent and which has now been conferred upon the Governor-General by order. My amendment is intended to make it clear that 'by order' does not mean order passed in any manner which the Governor-General may choose. Really that change can be effected only if a province is intending to add a portion to the area in which a High Court is to be re-constituted. Only in that case there may be a re-constitution of a High Court or the alteration of the area and other things and that is provided in section 229. Therefore, the Government is fully

entitled to make the alteration as to the area of the High Court or the re-constitution of the High Court or any change in its area by an order, but that order must be an order which can be made under section 229 of the Government of India Act. I only want to make this point clear that it cannot be done by any order which can be made but the order must be an order which can be made only under section 229.

Mr. President : Amendment moved :

"That in Clause 5 of the Bill, after the words 'by order' occurring in the 3rd line, the words 'made under section 229 of this Act' be inserted."

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, I am afraid I will have to oppose this also because there are two different powers contemplated by sections 219 and 229. The raising of an existing court to the status of a High Court which is provided in sections 219 and 229 provides the constitution of the High Court or the re-constitution of an existing High Court. So, I do not see any reason how the two should be confused with each other. One power is quite distinct and that is the power that we want to confer upon the Governor-General for the time being and therefore the amendment proposed by my Honourable friend is not necessary.

Mr. President : The question is :

"That in Clause 5 of the Bill, after the words 'by order' occurring in the 3rd line, the words 'made under section 229 of this Act' be inserted."

The motion was negatived.

Mr. President : The question is :

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clauses 6 and 7 were added to the Bill.

The Honourable Dr. Ishtiaq Husain Qureshi (East Bengal : Muslim) : Sir, I move :

"That in clause 8 of the Bill, to the sub-paragraphs (5A) and (5B) proposed thereby to be inserted in Part I of the Sixth Schedule to the Government of India Act, 1935, the following new sub-paragraph (5C) be added at the end, namely :—

- ‘(5C) Where a person becomes entitled to vote in a constituency under the provisions of sub-paragraph (5A) his wife shall also be entitled to vote in that constituency if she is otherwise qualified to vote and if
 - (a) she is not or is not entitled to be registered in the electoral roll for any other constituency not being a constituency specially formed for the purpose of electing a woman member, and
 - (b) her marriage to such person has not been dissolved.’”

I have great pleasure in moving this amendment because it shows that we have much greater consideration for the better halves in this Legislature than for the mere worse halves because it would be noticed that whereas the concession of voting is extended to the wife of a male Government servant, it is not extended to the mere male being the husband of an exalted woman public servant who happens to be outside. Now, I am absolutely certain that my friend and sister Begum Shah Nawaz and another friend Begum Ikramullah will no longer be able to say to us that the interests of women are not closest to our hearts or that we do not put them above our own interest. With these brief comments, I commend this motion to the House.

Mr. President : Amendment moved :

"That in clause 8 of the Bill, to the sub-paragraphs (5A) and (5B) proposed thereby to be inserted in Part I of the Sixth Schedule to the Government of India Act, 1935, the following new sub-paragraph (5C) be added at the end, namely:—

'(5C) Where a person becomes entitled to vote in a constituency under the provisions of sub-paragraph (5A) his wife shall also be entitled to vote in that constituency if she is otherwise qualified to vote and if
 (a) she is not or is not entitled to be registered in the electoral roll for any other constituency not being a constituency specially formed for the purpose of electing a woman member, and
 (b) her marriage to such person has not been dissolved'."

Mian Muhammad Iftikharuddin (Punjab : Muslim) : Sir, may I ask for a clarification from the Mover of this amendment ? If a woman marries a non-Pakistani and that person decides to become a citizen of Pakistan, would he be accepted as a citizen of Pakistan as a foreign woman, if married to a Pakistani, can be accepted as a Pakistani ? Equality between man and woman would demand that a woman who marries a non-Pakistani and that person decides to reside in Pakistan, he too should be accepted as a Pakistani. I have said this because the Honourable Member who moved this motion was very keen to please the ladies of this House. So, let him be clear on this point.....

Mr. President : I do not think you are serious about this.

Mian Muhammad Iftikharuddin : I am very serious. I want a clarification of this point.

Mr. President : How does it arise ? This amendment does not give any citizenship right.

Mian Muhammad Iftikharuddin : It gives voting rights. That was my point.

Mr. President : I have not been able to understand the relevancy of this question. However, if Dr. Ishtiaq Husain Qureshi wants to say anything in reply, he can.

The Honourable Dr. Ishtiaq Husain Qureshi : Sir, I have already pointed out that the point raised by Mian Sahib is not relevant to this amendment at all. It will arise when the person voting is a Pakistani citizen, otherwise that question will not arise. If Mian Sahib thought that the citizenship should be extended or should not be extended to persons of certain categories, then he should have raised this question in connection with the citizenship Bill. Actually, I have given Mian Sahib much greater credit for clear thinking than many of my friends have done hitherto and now he says something which raises doubts in my mind as well.

Mian Muhammad Iftikharuddin : I said I only wanted a clarification.

Mr. President : The question is :

"That in clause 8 of the Bill, to the sub-paragraphs (5A) and (5B) proposed thereby to be inserted in Part I of the Sixth Schedule to the Government of India Act, 1935, the following new sub-paragraph (5C) be added at the end, namely:—

'(5C) Where a person becomes entitled to vote in a constituency under the provisions of sub-paragraph (5A) his wife shall also be entitled to vote in that constituency if she is otherwise qualified to vote and if
 (a) she is not or is not entitled to be registered in the electoral roll for any other constituency not being a constituency specially formed for the purpose of electing a woman member, and
 (b) her marriage to such person has not been dissolved'."

Begum Jahan Ara Shah Nawaz (Punjab : Muslim) : Sir, I wanted to say something. I got up and wanted to speak.

The Honourable Dr. Mahmud Husain (East Bengal : Muslim) : Begum Sahiba wanted to speak on this motion.

Begum Jahan Ara Shah Nawaz : I could not unfortunately catch your eye.

Mr. President : I am sorry. All right ; you may speak now.

Begum Jahan Ara Shah Nawaz : Mr. Speaker, Sir, allow me to thank the Honourable Minister who has said on the floor of this House that the men-citizens of Pakistan and our present Government have so very kindly given a privilege to the better halves of this country. Sir, we are grateful to them for safeguarding our rights. All that I want to say and point out is this that brought up as we are in a society and belong as we do to a culture that has taught us to regard men as the better halves of the nation, we are glad that they are safeguarding our rights and interests and I would like to assure them that if at any time the power lies in our hands, we shall reciprocate to a greater extent than even they have done.

Mian Muhammad Iftikharuddin : At any rate equal.

Begum Jahan Ara Shah Nawaz : Moreover, Sir, I would very much like to see that the rule of *vice versa* is followed so that the husbands are not deprived of such a right. With these few words, I once again thank the Government.

Mr. President : The question is :

"That in clause 8 of the Bill, to the sub-paragraphs (5A) and (5B) proposed thereby to be inserted in Part I of the Sixth Schedule to the Government of India Act, 1935, the following new sub-paragraph (5C) be added at the end, namely :—

'(5C) Where a person becomes entitled to vote in a constituency under the provisions of sub-paragraph (5A) his wife shall also be entitled to vote in that constituency if she is otherwise qualified to vote and if
 (a) she is not or is not entitled to be registered in the electoral roll for any other constituency not being a constituency specially formed for the purpose of electing a woman member, and
 (b) her marriage to such person has not been dissolved."

The motion was adopted.

Mr. President : The question is :

"That clause 8, as amended, stand part of the Bill."

The motion was adopted.

Clause 8, as amended, was added to the Bill.

Clause 9 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, I beg to move :

"That the Bill, as amended, be passed."

Mr. President : The question is :

"That the Bill, as amended, be passed."

The motion was adopted.

THE DELIMITATION OF CONSTITUENCIES (ADULT FRANCHISE) (AMENDMENT) BILL

Mr. President : Consideration of the Bill to amend the Delimitation of Constituencies (Adult Franchise) Act, 1951. We take up the Bill clause by clause.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Pirzada Abdus Sattar Abdur Rahman (Sind : Muslim) : Sir, I beg to move :

“That the Bill to amend the Delimitation of Constituencies (Adult Franchise) Act, 1951, be passed.”

Mr. President : Motion moved :

“That the Bill to amend the Delimitation of Constituencies (Adult Franchise) Act, 1951, be passed.”

Mr. Ahmad E. H. Jaffer (Sind : Muslim) : As a Member who represents refugees in this House I have great pleasure in expressing gratitude of the refugees to the Government of Pakistan and particularly to the late Prime Minister, Mr. Liaquat Ali Khan. I had, as a matter of fact, taken a deputation to the late Prime Minister on behalf of Sind-Karachi Refugee Board to urge upon the Government the desirability of increasing the seats for the Muslim (Refugee) representatives in Sind. Originally the Delimitation Committee had recommended 9 seats and it was our desire and the desire of the refugees of Sind that the seats should be increased to 12. I am glad that the seats were going to be increased to 12 for refugees. I would again like to express the gratitude to the Government and particularly I would like to express appreciation of the sincere efforts of the late Prime Minister Mr. Liaquat Ali Khan that it was solely due to his personal interest and efforts that we were able to secure extra seats.

Mr. President : The question is :

“That the Bill to amend the Delimitation of Constituencies (Adult Franchise) Act, 1951, be passed.”

The motion was adopted.

MOTION RE : AMENDMENT OF CONSTITUENT ASSEMBLY RULES

The Honourable Pirzada Abdus Sattar Abdur Rahman (Sind : Muslim) : Sir, I request that this motion[†] be held over till the subsequent

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†MOTION

7. The Honourable Mr. Abdus Sattar Pirzada to move the following :

“That after Rule 6A of the Constituent Assembly Rules, the following new Rule be inserted :—

6B. *Disqualification for membership.*

sittings of the House. I have been receiving a number of amendments. Even now I have been handed over amendments on my seat on the

[Footnote continued from page 54 ante.]

- (1) (a) No person shall be eligible for election to the Constituent Assembly of Pakistan unless he has been or has become a permanent resident of Pakistan and owes allegiance to Pakistan and to no other State. In case of dispute with regard to the question of eligibility the decision of the President shall be final.
- (b) Any member of the Constituent Assembly in respect of whom the President has reason to believe that he has neither been nor become a permanent resident of Pakistan or that he does not owe allegiance to Pakistan exclusively as provided in clause (a) of this sub-rule, may be called upon by the President to show cause, within a period specified by the President, as to why his seat should not be declared vacant.
- (c) If such a member fails to satisfy the President within the specified period, that he has not incurred any of the disqualifications mentioned in clause (b) of this sub-rule, the President shall order that he ceases to be a member of the Constituent Assembly and declare his seat vacant.
- (d) The decision of the President under this sub-rule shall be final and shall not be questioned in any Court of law or before any other authority.
- (2) (a) A person shall be disqualified for being chosen as, and for being, a member of the Constituent Assembly—
 - (i) if he is of unsound mind and stands so declared by a competent court;
 - (ii) if he is an undischarged insolvent;
 - (iii) if he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order-in-Council or by a law of any legislative authority in Pakistan which that authority was competent to make to be an offence or practice entailing disqualification for membership of the Constituent Assembly or the Central Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Order or law;
 - (iv) if he has been dismissed for misconduct from a service of or from a post in connection with the affairs of the Federation or a province, unless a period of five years or such less period as the President may allow in any particular case, has elapsed since his dismissal;
 - (v) if he has been convicted of any other offence by a court in Pakistan and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the President may allow in any particular case, has elapsed since his release;
 - (vi) if, having been nominated as a candidate for the Central or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order-in-Council made under the Government of India Act, 1935, or by a law of any legislative authority in Pakistan which that authority was competent to make, unless five years have elapsed from the date by which the return ought to have been lodged or the President has removed the disqualification:

Provided that a disqualification under sub-clause (vi) of this clause shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the President may in any particular case allow.
- (b) A person shall not be capable of being chosen a member of the Constituent Assembly while he is serving a sentence of transportation or of imprisonment for a criminal offence.
- (c) Where a person who by virtue of a conviction, or an order of dismissal or a conviction and a sentence, becomes disqualified by virtue of sub-clause (iii), (iv) or (v) of clause (a) of this sub-rule is at the date

[Concluded on page 56 *infra*.]

[The Honourable Pirzada Abdus Sattar Abdur Rahman.]
desk. There are a number of amendments. I, therefore, request that this may be taken up at the next sitting of the House.

Mr. President: This may stand over.

The House stands adjourned till 3 P.M. on Wednesday.

The Assembly then adjourned till Three of the Clock, on Wednesday, the 21st November, 1951.

[Concluded from page 55 ante.]

of the disqualification a member of the Constituent Assembly, his seat shall, notwithstanding anything in this sub-rule not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction, order or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-rule he shall not sit or vote.

(d) If a person sits or votes as a member of the Constituent Assembly when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of clause (c) of this sub-rule, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

In this rule—

“Central Legislature” means the Central Legislature established under the Government of India Act, 1919 ; and references to Pakistan shall be construed as regards any period before the 15th day of August, 1947, as references to British India as defined in Sub-Section (1) of Section 311 of the Government of India Act, 1935, as originally enacted.”

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